

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION**

In the Matter of

LEPAGE BAKERIES, INC.

Employer

and

CHAUFFEURS, TEAMSTERS & HELPERS,  
LOCAL UNION 633 OF NEW HAMPSHIRE  
a/w INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS

Petitioner

Case 1-RC-21877

**DECISION AND DIRECTION OF ELECTION<sup>1</sup>**

Chauffeurs, Teamsters & Helpers, Local Union 633, OF New Hampshire a/w International Brotherhood of Teamsters (Union) is seeking to represent a bargaining unit of all route sales associates and route sales associate trainees employed by Lepage Bakeries, Inc. (Employer) at its Hudson, New Hampshire facility, but excluding all other employees, professional employees, clerical employees, guards, and supervisors<sup>2</sup> as defined in the Act. The Employer contends that in addition to the Hudson, New Hampshire facility, the unit must also include its Manchester, Belmont, Berlin, Dover, Littleton, and North Conway, New Hampshire facilities.<sup>3</sup> The Employer further contends that its marketing representatives and thrift store

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<sup>1</sup> Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

<sup>2</sup> The parties stipulated and I find that regional district and area sales managers and supervisors are supervisors within the meaning of Section 2(11) of the Act and, therefore, are excluded from the unit found appropriate. In addition, based on the record as a whole, and specifically on evidence that they perform the same functions as the area sales managers, I find that the directors of sales are also supervisors within the meaning of Section 2(11) of the Act and are excluded from the unit.

<sup>3</sup> Although the Employer argued at the hearing for the inclusion of the Leominster, Massachusetts branch employees in the bargaining unit, it no longer seeks to include them.

clerks employed at the listed facilities must be included in the unit with the route sales associates and route sales associate trainees.<sup>4</sup>

I conclude that the unit as petitioned for is an appropriate unit, and that the thrift store clerks and marketing representatives lack a sufficient community of interest with the route sales associates and route sales associate trainees to require their inclusion in the unit. There are approximately 21 employees in the unit found appropriate.

Accordingly, upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction here.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

### **FACTS**

The Employer, a Delaware corporation with its principal office located in Auburn, Maine, is engaged in the production, sale, and distribution of baked goods in the states of Maine, Vermont, New Hampshire, Massachusetts, New York, and Connecticut.

The Employer's administrative offices, including its human resources office headed by Betty Bartos, are located in Auburn, Maine. The Employer's associate's handbook, policies, and pay scales apply company-wide.

Transport drivers transport the product to the Employer's branch distribution facilities in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and New York for distribution by the Employer's route sales associates to client grocery stores. The product is, in turn, distributed to client stores through the Employer's branch or division distribution facilities. At some branches the Employer operates thrift store outlets that sell, on a retail basis, the Employer's products that failed to sell at client stores prior to the market code freshness date.

The parties are in agreement that the unit should include route sales associates and route sales trainees at the Hudson, New Hampshire branch. The Employer contends, however, that the

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<sup>4</sup> The Union would not proceed to an election if the unit proposed by the Employer were found to be an appropriate unit.

unit must also include its Manchester, Belmont, Berlin, Dover, Littleton, and North Conway, New Hampshire branches. Neither party seeks to include other branches in the unit.<sup>5</sup>

Andy Barowski<sup>6</sup> is President and CEO of the Company. Reporting to him is Senior Vice President of Sales Peter Roy, whose office is in Auburn, Maine. Roy oversees sales and distribution.

Tom Cerratini, vice president of sales for the Employer's southern division, which encompasses branches in Hudson and Manchester, New Hampshire; Putnam, Connecticut; and Leominster, Massachusetts, reports to Roy.<sup>7</sup> Cerratini is responsible for sales and distribution in his designated geographical area.

Also reporting to Roy are an area sales manager and two directors of sales, all of whom share similar responsibilities with respect to their branches. They include Area Sales Manager Scott Russell, and Directors of Sales, Joe Moreno and Paul Malazzo. Russell is responsible for the Employer's Belmont, Littleton, Dover, North Conway, and Berlin, New Hampshire branches. Moreno is responsible for branches in Connecticut, while Malazzo is responsible for branches in Albany, New York and Brattleboro, Vermont. A second area sales manager, Ken Ouelette, reports to Russell, and is the first line supervisor at the Belmont and Littleton branches.

Cerratini's direct reports include Area Sales Manager Forest Brock, who is responsible for the Hudson and Manchester, New Hampshire branches, and Dave Nogler, district sales manager for the Leominster, Massachusetts and Putnam, Connecticut branches.<sup>8</sup> Brock and Nogler share similar responsibilities with respect to their branches, despite their distinct job titles.

The area sales managers, directors of sales, and district sales managers are responsible for sales and operations within their designated geographical areas. They oversee operations at the branches, including daily routing and sales. Regional sales supervisors are the first line supervisors at the branch facilities.

Three of the Employer's area sales managers oversee branch facilities at issue in this proceeding. One of them, Forest Brock, oversees the Hudson and Manchester branches, and is based in Hudson. Russell, who has a "floating" office, oversees Belmont, Littleton, Dover, North Conway, and Berlin. Ouellette, based in Belmont, is also an area sales manager and provides direct supervision to associates at the Belmont and Littleton, New Hampshire branches.

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<sup>5</sup> The Employer operates 31 branches, 7 of which are at issue in this case.

<sup>6</sup> He is mistakenly referred to in the record as Andy Browksi.

<sup>7</sup> The Employer previously operated a northern division that encompassed facilities located in Maine, Northern New Hampshire, Vermont, and New York. No such division currently exists, although the branches that constituted that division are still in operation.

<sup>8</sup> Until recently, Tim Jackson was the area sales manager for the Hudson branch.

At each branch, a regional sales supervisor oversees sales and operations, including the direct supervision of route sales associates, route sales trainees (hereinafter "trainees"), and thrift store clerks. Route sales associates and trainees work out of, but mostly away from, their branch facility.<sup>9</sup> Thrift store clerks work at stores located in some of the branch facilities.<sup>10</sup> Staffing at the branch facilities at issue is as follows:

Hudson -- Area Sales Manager Forest Brock; 2 supervisors,<sup>11</sup> 20 route sales associates, 1 trainee, and 3 thrift store clerks.

Manchester -- Area Sales Manager Forest Brock, 1 regional sales supervisor (position vacant), 10 route sales associates, and 1 trainee.

Dover -- Area Sales Manager Scott Russell, 1 regional sales supervisor (first name Aaron -- last name unknown), 11 route sales associates, and 1 trainee.

Belmont -- Area Sales Managers Scott Russell and Ken Ouelette, 9 route sales associates, and 2 thrift store clerks.

Littleton -- Area Sales Managers Scott Russell and Ken Ouelette, 3 route sales associates, 1 trainee, and 2 thrift store clerks.

North Conway -- Area Sales Manager Scott Russell, Regional Sales Supervisor Bernie Martel, 3 route sales associates, and 2 thrift store clerks.

Berlin -- Area Sales Manager Scott Russell, Regional Sales Supervisor Bernie Martel, and 3 route sales associates.

In addition, the Employer employs seven marketing representatives, three of whom work out of the Hudson branch, sharing an office with the regional supervisor.<sup>12</sup> The marketing representatives are not required to report to the branch office daily, or on any particular schedule, but do receive their inter-company mail there. Often they go directly from their homes to service accounts at various Market Basket supermarkets in their branch's geographical area.

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<sup>9</sup> Approximately three months ago, the Employer changed the job title of the trainees from "spare route sales associate" to "route sales associate trainee."

<sup>10</sup> The Employer does not operate thrift stores at its Manchester, Dover, and Berlin, New Hampshire branches.

<sup>11</sup> One position was vacant at the time of the hearing; the other supervisor had been hired but had not yet begun work. Until about early January 2005, Kevin Leavy was the supervisor in Hudson.

<sup>12</sup> The remaining four marketing representatives work out of branches located in Maine, New York, and Springfield, Massachusetts, which are not at issue in this case. The Employer does not contend that the Albany or Massachusetts marketing representatives should be included in the proposed bargaining unit.

A representative of the Employer's corporate human resources office, often together with a local manager, interviews applicants for trainee positions in all locations. Peter Roy reviews their applications and resumes, and Director of Human Resources Bartoes makes final job offers to them. The area sales manager interviews thrift store clerks. Roy, a representative of human resources, and an area sales manager interview marketing representatives.

### **Route Sales Associates & Trainees**

Route sales associates are assigned to a particular geographical area and are responsible for selling and distributing the Employer's product to client stores over an assigned route. Trainees perform the same duties, but they "float," filling in where needed on open routes.

The number of route sales associates, trainees, and marketing representatives servicing a particular geographical area is determined by the size of the area being covered, market share, the number of routes, and a variety of other factors. Roy determines to which branch and route a particular account is assigned. Occasionally, the Employer will shift business from one branch or division to another, for example if it picks up new business in a division. The Hudson branch has the largest distribution in its geographical area and is the focal point for the Employer's distribution network in New Hampshire.

All route sales associates at the Employer's 31 branches perform the same basic job duties. They typically work an average of 5 days per week, 10 to 11 hours per day, reporting to work at their branch between 2:00 and 3:00 a.m. When they arrive, the orders for their accounts have already been set aside for them in 10 by 12 foot grids by transport drivers.<sup>13</sup> The route sales associates use handheld computers to check the loads that have been set aside for them against clients' orders. They then sort their loads according to delivery sequence, load them onto Company trucks and set out on their routes by 4:00 or 4:30 a.m. They generally do not return to the branch during the day, except, if it is convenient, to unload empty trays in order to make room for other items. They are not present at the branches when the thrift stores open at 9:00 a.m.

Route sales associates normally make their first delivery to a large supermarket such as Market Basket, which has early receiving hours. They deliver the fresh product, credit it to the store, remove any product on display that is past the market code date, arrange fresh product on the shelves, and merchandise the rack by making sure it has the proper promotional signs and/or stickers and that the product is arranged on the shelves by variety, according to the "planogram" for that particular account. Product that has passed its code date is loaded back onto the truck and returned to the distribution center at the end of the work day for resale in the thrift store. After completing their routes, the route sales associates return to the branch, off-load the empty trays from the market and their stale product, and give the thrift store clerks any cash collected during the day, as well as any product that is past the code date.

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<sup>13</sup> Orders for larger clients are typically placed through the Employer's automatic ordering system. Orders for smaller and mid-sized markets, restaurants, and institutional clients are entered into the system by the route sales associates.

Some stores on a route may require recall runs later in the day to restock the shelves and get the store back in "customer-ready" condition. Typically, routes sales associates and trainees handle these recall runs, although marketing representatives and sales supervisors also perform recall runs.<sup>14</sup>

Route sales associates receive a base pay of \$245 per week, in addition to a commission that varies according to which products they sell and, in some cases, to whom. Certain brands that have been designated as "premium" products, for example, earn them a ten percent commission rate, while other full-service private label products earn them five percent, and restaurant sales only garner a three percent commission. Route sales associates' actual weekly earnings amount to an average of \$850 to \$900 per week. Over time, they may earn more money by developing new business on their route, and by bidding for larger, more lucrative routes.

Trainees perform the same functions as route sales associates, primarily filling vacancies in their own branch or, where necessary, in other branches within the same geographical area. They are trained by a route sales associate or a supervisor. They become regular route sales associates when an open route goes up for bid. Bidding is based on seniority, and involves only route sales associates and trainees employed at the branch where the open route is located. The last remaining route is assigned to the trainee. If a route is open and there is no trainee in the particular division where the route is up for bid, a route sales associate or trainee from another division may request to transfer to that division.

On Thursdays, the area managers compile manpower reports for the following week for each division. The reports are sent via email to Peter Roy, who reviews them and assigns trainees to routes for the following week based on the needs of each division. Usually on Friday, a trainee is informed by his or her division or area manager of his or her assignment for the following week. Generally a trainee is assigned to his or her own branch if there is an opening, although occasionally a trainee will be temporarily assigned to another branch within his or her geographical area. If the distance between facilities is about an hour, the trainee has the option of either commuting or having lodging provided.

Route sales associates, including trainees, also bid by seniority on Sunday recall routes, for which they earn \$120-\$150 per day above and beyond their regular compensation. Bidding occurs first among route sales associates and trainees from the branch to which the route is assigned. Most Sunday recall routes at the Hudson branch are filled by Hudson associates. The Sunday recall route typically involves four to six stops within the branch's geographical area.

Trainees are paid a higher base rate, but receive a lower commission than route sales associates. Their base salary is \$475, plus three percent commission on premium sales and one percent on all other sales. Their actual weekly earnings are variable, averaging \$700 to \$720, but ranging from \$500 to \$800, depending on their assigned route. They also get a daily meal allowance of \$30 and additional funds of \$20 per day if they are assigned a route that requires extra travel.

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<sup>14</sup> All told, the route sales associates spend an average of 65 percent of their day performing merchandising (as opposed to sales) related functions.

Route sales associates and trainees receive their daily direction on the job from their branch's regional supervisor.<sup>15</sup> For example, if a route sales associate or trainee needs to end his or her route early, or call in sick, (s)he contacts the regional supervisor. Similarly, if a route sales associate or trainee has a problem with an account, or a disagreement or incident on the road, (s)he contacts the regional supervisor. Regional supervisors do not make the final decision regarding the removal of a sales associate from an account based on alleged poor performance or issues concerning interactions at the store level. Such decisions are typically referred to the Employer's corporate human resources division in Auburn, Maine.

The only record evidence of a route sales associate voluntarily transferring from Hudson to another district involved Gene Newell, who permanently transferred to the Belmont branch in about January 2005.<sup>16</sup> Similarly, the Employer presented evidence of only one route sales associate, Chris Attridge, who voluntarily transferred two to three years ago from the Brattleboro, Vermont branch to Hudson, New Hampshire. No trainee who was hired and worked at the Hudson branch has transferred to a permanent position as a route sales associate in another branch.

Finally, the evidence indicates that, between August 2004 and the end of January 2005, there was only one instance in which a Hudson-based trainee covered routes assigned to another branch, and of the four trainees from other branches who covered Hudson routes during that timeframe, two were based in Maine branches (Presque Isle and Biddeford, Maine) which are not at issue here. The other two were based in Dover and Manchester, New Hampshire, respectively. During the same timeframe, August 2004 to the end of January 2005, Hudson-based supervisors transferred temporarily to other branches on 11 occasions, and supervisors from other branches temporarily transferred to Hudson on 14 occasions.

Both route sales associates and trainees receive paid vacation,<sup>17</sup> sick leave, holiday pay, fully paid health insurance,<sup>18</sup> and are eligible to participate in the Employer's profit sharing and 401(k) plans. Route sales associates, including trainees, are assigned a company truck, which they pick up at the beginning of the work day at the branch, and return at the end of their work day. Truck assignments are based on the size of an associate's route, and are made by the Employer's Head of Transportation in Auburn, Maine.

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<sup>15</sup> In branches such as Belmont and Littleton, New Hampshire, which have no regional sales supervisor, the first line supervisor for the route sales associates is the area sales manager.

<sup>16</sup> The Employer identified a second route sales associate who transferred permanently from the Hudson branch to the Burlington, Vermont branch. However, its witness, Roy, was uncertain of the associate's name, and of when it occurred, indicating that it may have been a few years ago.

<sup>17</sup> One week after one year of service, two weeks after two years, three weeks after seven years, four weeks after fifteen years, and five weeks after twenty-five years of service.

<sup>18</sup> Health insurance benefits for the associate, his or her spouse and children are fully paid if the associate was hired before January 2004. Associates hired after that date make no contribution on their own behalf, but must contribute \$28 weekly for up to three children, and \$55 weekly for their spouse.

Route sales associates and trainees wear a uniform of blue Dockers pants, blue cotton/polyester shirt, blue jacket, and a blue hat with the company logos on it.

Since they use company trucks to deliver product to the Employer's clients, the Employer requires route sales associates and trainees to be licensed by the Department of Transportation (DOT).

All major disciplinary decisions are made at the Employer's corporate headquarters in Auburn, Maine. Regional sales supervisors have no authority to formally discipline route sales associates, but may counsel them and make disciplinary recommendations. The President, CEO, and Senior Vice President of Sales set pay scales company-wide.

### **Marketing Representatives**

The Hudson-based marketing representatives service almost exclusively Market Basket accounts. They report to the regional supervisor as well as to an account manager who works out of the Market Basket supermarket. They support the route sales associates by setting up special promotions and displays at anchor (Market Basket) stores, checking on the merchandising of the product, and looking for ways to expand the Employer's presence at the store. The three marketing representatives at issue here are all assigned to the Hudson branch, but largely work away from the branch, except to pick up their inter-office mail and to plan and discuss promotional activities. They typically begin their work day at around 6:30 or 7:00 a.m., although they appear not to have fixed hours or schedules. They work 5-6 days per week, rotating Saturdays. There is no requirement that they report regularly to the Hudson branch office and, in fact, they routinely go directly from their houses to the accounts they service, without checking in at the branch.

When a Saturday promotional event is planned at a Market Basket store, the marketing representatives typically spend the Thursday afternoon before the event at the branch office reviewing event-related displays and orders with the route sales associates.<sup>19</sup>

Also, although the duties and responsibilities of the marketing representatives have not changed since 2002, the Employer has encouraged them to collaborate more with the route sales associates by requiring them to jointly complete, at the store level, a market report. The report, which is signed by both the marketing representative and the route sales associate, indicates that a particular promotion is going well, that the marketing representative and the route sales associate collaborated in setting up the customer displays according to the planogram for the particular account, and that they met with the store manager. There is no evidence in the record as to who actually completes the reports, nor is there evidence of the frequency with which these reports are completed.<sup>20</sup>

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<sup>19</sup> The record did not explain how frequently such promotional events occur, the duration and nature of these exchanges between marketing representatives and routes sales associates, and who else, if anyone, participates.

<sup>20</sup> The Employer presented no other evidence of increased contact or collaboration between the route sales associates and the marketing representatives since 2002.



The Employer provides its marketing representatives company cars that they use to commute from their homes to the client stores, as well as for personal business. They usually have a set number of stores that they visit in a particular day. Although they perform both sales and merchandising functions at each store, during the course of the day they spend about 75 percent of their time performing merchandising functions.

Although marketing representatives do not typically encounter a route sales associate at every stop along their route, they make an effort to have "face time" at the stores with the route sales associates to ensure communication and to go over promotions.

The marketing representatives are salaried, earning \$700-750 per week, and do not earn any commission. Approximately 90 percent of them receive a 3 percent annual pay increase. In addition, they receive medical insurance, vacation, and are eligible to participate in the Employer's profit sharing and 401(k) plans. They do not earn paid sick leave or receive paid holidays. Unlike the route sales associates and trainees, the marketing representatives do not wear a company uniform.

Although transfers between marketing representative and route sales associate positions do occur, the Employer cited no specific examples of such transfers and instead noted that more often such transfers would be into supervisory positions.

Like route sales associates and trainees, marketing representatives are required to have a DOT license because occasionally they are asked to transport additional stock to a client market for a large promotional event at times when route sales associates are not working. They make such deliveries using a company truck, and thus are required to have the appropriate license to operate the truck.

There is no evidence in the record that the marketing representatives and thrift store clerks have any regular contact in the context of performing their job duties.

### **Thrift Store Clerks**

The Employer operates thrift stores, at which it sells to the general public returned products that are beyond the sell-by date, at four of the facilities at issue here. The stores are operated by thrift store clerks, part-time employees who work rotating eight-hour shifts, three days a week, for a total of about twenty-four hours weekly. They begin their work day at 8:45 a.m.

The thrift store clerks are paid on an hourly basis, starting at \$10.35 per hour, with a ceiling rate of \$12.55 per hour. They can receive discretionary increases of 20 to 45 cents per hour based on bi-annual performance evaluations, based on recommendations made by the regional sales supervisors to the Senior Vice President of Sales Roy.

Thrift store clerks receive vacation benefits and paid holidays, and are eligible to participate in the profit sharing and 401(k) plans, but are not eligible for health insurance or paid sick leave. Their uniform consists of a smock.

The route sales associates return product that has passed its sell-by date to the branch each afternoon. The thrift store clerks check the returns and merchandise the store as needed. They also accept cash collected by the route sales associates during the day, give them receipts for the cash, and pass on messages received from clients, including special orders or other messages that may affect their routes. In addition, while the store is open, they answer the telephones, sell merchandise, and operate the cash register.

No thrift store clerks have transferred to route sales associate or trainee positions, nor have route sales associates or trainees become thrift store clerks. On one occasion cited in the record, however, a Dover-based route sales associate was permitted to work in a thrift store while his driver's license was under suspension. The record does not reflect when this occurred. The Employer also cited a recent instance of a thrift store clerk becoming a marketing representative but did not identify the facility at which this occurred.

Since their job duties do not require them to drive a company truck, the thrift store clerks are not required to be licensed by DOT. Their duties have not changed since 2002, nor has their level of interaction with the route sales associates.

## **ANALYSIS AND CONCLUSIONS**

### **1. Whether the Unit Must Include Manchester, Belmont, Berlin, Dover, Littleton, and/or North Conway Facilities:**

In deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate. P.J. Dick Contracting.<sup>21</sup> The Board does not, however, compel a petitioner to seek any particular appropriate unit. The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. Black & Decker Mfg. Co.<sup>22</sup> "There is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act only requires that the unit be 'appropriate.'" Morand Bros. Beverage Co.,<sup>23</sup> see Staten Island University Hospital v. NLRB;<sup>24</sup> see also American Hospital Assn. v. NLRB,<sup>25</sup> interpreting the language of Section 9(a) to suggest that "employees

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<sup>21</sup> 290 NLRB 150 (1988).

<sup>22</sup> 147 NLRB 825, 828 (1964).

<sup>23</sup> 91 NLRB 409, 418 (1950), enfd. on other grounds 190 F.2d 576 (7th Cir. 1951).

<sup>24</sup> 24 F.3d 450, 455 (2d Cir. 1994).

<sup>25</sup> 499 U.S. 606, 610 (1991).

may seek to organize a 'unit' that is 'appropriate' – not necessarily the single most appropriate unit." A union is therefore not required to request representation in the most comprehensive or largest unit of employees of an employer unless an appropriate unit compatible with that requested unit does not exist. Visiting Nurses Association of Central Illinois;<sup>26</sup> P. Ballantine & Sons;<sup>27</sup> accord: Ballentine Packing Co.<sup>28</sup>

It is well-established that a unit consisting of employees at a single-facility is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated with another unit, that it has lost its separate identity. Rental Uniform Service.<sup>29</sup> To determine whether the presumption has been rebutted, the Board examines such factors as centralized control over daily operations and labor relations; extent of autonomy in the local manager to handle the facility's day-to-day ordinary operations and to supervise the employees' day to-day work; similarity of skills, functions, and working conditions; extent of employee interchange; geographic proximity; and bargaining history, if any. Id.<sup>30</sup>; Esco Corp.<sup>31</sup> Based on an examination of these factors, I conclude that the Employer has failed to meet its burden of establishing that the petitioned-for single location unit has been so effectively merged into a more comprehensive unit, or is so functionally integrated with the other locations that the Employer seeks to include in the unit that it has lost its separate identity.

In determining the community of interest among employees working at more than one location, the Board examines traditional community of interest factors, including geographic proximity, local autonomy, employee interchange and interaction, functional integration, the employees' terms and conditions of employment, bargaining history, and extent of union organization. NLRB v. Carson Cable TV.<sup>32</sup> Here, none of these factors, either separately or taken as a whole, mandates the inclusion of the Manchester, Belmont, Berlin, Dover, Littleton, and/or North Conway branches with the petitioned-for Hudson-only unit.

The route sales associates and trainees at all of the Employer's distribution facilities share the same compensation, hours, and working conditions, and are subject to uniform policies, procedures, and overall management. The Board has held, however, that centralized administration is not the primary factor it will consider in determining whether employees at two

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<sup>26</sup> 324 NLRB 55 (1997).

<sup>27</sup> 141 NLRB 1103, 1107 (1963).

<sup>28</sup> 132 NLRB 923, 925 (1961).

<sup>29</sup> 330 NLRB No. 44, slip op. at 2 (1999), citing with approval Dixie Belle Mills, 139 NLRB 629, 631 (1962).

<sup>30</sup> Slip op. at 2, and cases cited therein.

<sup>31</sup> 298 NLRB 837, 839 (1990), and cases cited therein.

<sup>32</sup> 795 F.2d 879 (9th Cir. 1986).

facilities share a community of interest. See Renzetti's Market, Inc.<sup>33</sup> The Employer does not argue that the scope of the unit must either include all of its facilities, or even all facilities in a particular division. The only issue is whether the scope of the unit must include the Manchester, Belmont, Berlin, Dover, Littleton, and North Conway branches. Therefore, the fact that the sales route associates and trainees from these other branches share the same wages, hours, working conditions, and overall management as those at the Hudson branch included in the unit is insufficient to force the inclusion of the Manchester, Belmont, Berlin, Dover, Littleton, and North Conway branch employees, to the exclusion of other locations of the Employer.

Bargaining history is not a factor, since there is none. Nor does geographic proximity require inclusion of the Manchester, Belmont, Berlin, Dover, Littleton, and North Conway branches.<sup>34</sup>

There has been no temporary interchange of regular route sales associates between Hudson and the branches sought to be included in the unit. Although the record indicates that in November 2004 the Employer shifted some business from Hudson to Manchester, and before that began servicing the Nashua area (which had previously been serviced out of Manchester) out of Hudson, there is no evidence that these shifts in business resulted in corresponding transfers of sales associates. This evidence is insufficient to establish functional interchange.

The record only cites one instance of a permanent transfer of a route sales associate from Hudson to a branch sought to be included in the unit (Belmont), and one from a branch not sought to be included in the unit (Brattleboro, Vermont) to Hudson. There has been some assignment of trainees from Manchester and Dover to Hudson, but trainees from other locations which the Employer does not seek to include in the unit have also been assigned to Hudson. While there is evidence in the record that regional sales supervisors from Hudson have traveled to other branches in issue (and vice versa) to help out, they are not eligible for inclusion in the unit.

The Employer cites a recent Board decision, United Rentals, Inc.,<sup>35</sup> in support of its position that the marketing representatives' duties overlap with those of the route sales associates and trainees to such an extent that they must be included in the bargaining unit. I find United Rentals to be distinguishable in a number of respects, most notably in that the employees in that case, unlike the employees in this case, performed the duties of employees in other classifications on a daily basis, despite their designated job classifications.

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<sup>33</sup> 238 NLRB 174, 175 (1978).

<sup>34</sup> As noted in the Employer's brief, the distances between many of the facilities it seeks to include in the unit are not in the record. However, I take administrative notice that the approximate distance of each branch at issue here from Hudson is as follows: Manchester, 20 miles; Belmont, 56 miles; Berlin, 169 miles; Dover, 64 miles; Littleton, 121 miles; and North Conway, 135 miles.

<sup>35</sup> 342 NLRB No. 72 (2004).

Finally, the Employer argues in its post-hearing brief that it has rebutted the presumption that a single-facility unit is an appropriate bargaining unit by showing functional integration so substantial as to negate the separate identity of the single-facility unit. I disagree. The record indicates that each branch has substantial local autonomy since each has first line supervision in either the regional sales supervisor or the area sales manager. Accordingly, I find that the evidence does not require the inclusion of the Manchester, Belmont, Berlin, Dover, Littleton, and/or North Conway branches with the petitioned-for Hudson branch. Associated Milk Producers, Inc.<sup>36</sup>

## **2. Whether the Unit Must Include Marketing Representatives and Thrift Store Clerks:**

Applying the traditional community of interest standards referred to above, I find that the route sales associates and trainees share a community of interest sufficiently distinct from both the marketing representatives and the thrift store clerks so as to constitute a separate appropriate unit. Therefore, I will exclude the marketing representatives and the thrift store clerks from the unit.

The route sales associates and trainees have different compensation, supervision, benefits, and working conditions from the marketing representatives. The route sales associates and trainees report directly to the regional sales supervisors, bid on fixed routes, and are paid on a base wage plus commission basis. The marketing representatives have a dual reporting system under which they report both to an account manager located at an anchor client store and to the regional sales supervisor, work from their homes, are provided a company car which they are permitted to use for personal business, do not bid on their routes, and are salaried.

The route sales associates and trainees earn paid sick leave and paid holidays, while the marketing representatives do not. The route sales associates and trainees wear a uniform, while the marketing representatives do not. While the marketing representatives may encounter route sales associates and trainees at a store in the course of the day, this encounter is more chance than planned. Finally, there has been no temporary or permanent interchange between marketing representatives and route sales associates or trainees.

Likewise, the compensation, benefits, and working conditions of the route sales associates and trainees differ from those of the thrift store clerks. The route sales associates and trainees service the Employer's wholesale business, are paid on a base rate plus commission basis, work primarily away from the branch, and work 10-11 hour days, approximately 5 days a week. The thrift store clerks service the Employer's retail customers, are paid on an hourly basis, work exclusively at the branch premises, and all work part-time.

The route sales associates and trainees are eligible for sick leave and health insurance, neither of which is available to the thrift store clerks. The route sales associates bid on routes, while thrift store clerks are assigned their schedules. Route sales associates and trainees wear different uniforms from the thrift store clerks. There have been no permanent transfers between

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<sup>36</sup> 251 NLRB 1407 (1980).

thrift store clerks and route sales associates or trainees. The only instance of temporary interchange consisted of a personal accommodation made for a route sales associate to work in a thrift store while his driver's license was under suspension. Finally, the daily interaction between the two groups is very limited because the route sales associates and trainees are only at the branch facility when the thrift store is open after they complete their routes.

The Employer maintains that although its witness, Peter Roy, testified that the job classifications at issue have not changed since the Regional Director's 2002 decision, the level of interaction between the route sales associates and marketing representatives has increased substantially since that time. I find that the record is insufficient to establish a level of interaction which would require me to include the marketing representatives in a bargaining unit with the route sales associates.<sup>37</sup>

I note that the Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. Bartlett Collins Co.<sup>38</sup> In this case, while a unit that includes the thrift store employees and the marketing representatives *might* be an appropriate unit if petitioned for, it is clear that the employees sought by the Petitioner in this case share a community of interest sufficiently distinct from the thrift store employees and the marketing employees such that a unit limited to the petitioned-for employees is also appropriate. Therefore, I reject the Employer's argument.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All route sales associates and route sales associate trainees employed by the Employer at its Hudson, New Hampshire distribution facility, but excluding all other employees, marketing representatives, thrift store clerks, professional employees, clerical employees, guards, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those

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<sup>37</sup> The Employer argues that the facts of this case are analogous to those in Eastman Interiors, Inc., 273 NLRB 610 (1984), in which the Board reversed the Regional Director, finding that only an overall multi-facility unit was appropriate in light of the highly integrated nature of the sales and warehousing operations, and the highly interdependent nature of the operational structure in that case. I find the facts of Eastman Interiors to be distinguishable from those of the instant case, and therefore reject the Employer's contention that based on the facts and outcome of that case, I must find a multi-location unit to be appropriate here.

<sup>38</sup> 334 NLRB No. 76 (2001).

in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by Chauffeurs, Teamsters & Helpers, Local Union 633 of New Hampshire, a/w International Brotherhood of Teamsters.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc.,<sup>39</sup> NLRB v. Wyman-Gordon Company.<sup>40</sup> Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility.<sup>41</sup> In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before March 4, 2005. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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<sup>39</sup> 156 NLRB 1236 (1966).

<sup>40</sup> 394 U.S. 759 (1969).

<sup>41</sup> 315 NLRB 359 (1994).

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by March 11, 2005.

/s/ Rosemary Pye

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Rosemary Pye  
Regional Director  
First Region  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Dated at Boston, Massachusetts

this 25th day of February, 2005.

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